

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

- - -

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

-against-) Civil Action No.
5:21-cv-785-XR

ROBERT J. MUELLER, DEEPROOT)
FUNDS LLC (a/k/a dprr Funds,)
LLC, AND POLICY SERVICES INC.,)

Defendants.)

-and-)

DEEPROOT TECH LLC, DEEPROOT)
PINBALL LLC, DEEPROOT STUDIOS LLC,)
DEEPROOT SPORTS & ENTERTAINMENT)
LLC, DEEPROOT RE 12621 SILICON)
DR LLC, AND ROBERT J. MUELLER,)
JEFFREY L. MUELLER, AND BELINDA)
G. BREEN, AS CO-TRUSTEES OF THE)
MB HALE OHANA REVOCABLE)
TRUST,)

Relief Defendants.)

VIDEOTAPED DEPOSITION OF DENNIS J. CONCILLA

Wednesday, July 12, 2023

9:35 a.m.

Carlile Patchen & Murphy

950 Goodale Boulevard

Suite 200

Columbus, Ohio 43212

REPORTED BY:

SUSAN L. COOTS, RPR

REGISTERED PROFESSIONAL REPORTER

JOB No. 230712ARSI

09:46 1 A Really, I mean, I -- maybe a half a dozen
2 times in the last 30, 40 years. It's been state reg --
3 state -- state regulatory actions. It's actually been
4 divorce actions where there's -- where they're trying to
09:46 5 see how to value a book of business on behalf of an
6 investment adviser or broker. I think I've testified
7 before the Legislature on those issues.

8 Q Uh-huh. So just to back up. Did Mr. Hulings
9 ask whether you would serve as an expert in this case?

09:46 10 MR. HULINGS: Hold on.

11 MS. SANSALONE: Yeah. I'm going to object
12 based on privilege and leave it to Jay to assert that.
13 But I think that that is invoking privilege.

14 MR. HULINGS: I agree and object. Request the
09:47 15 witness not discuss communications with -- between his
16 firm and our firm.

17 MS. WARDEN: Okay.

18 BY MS. WARDEN:

19 Q So you -- Mr. -- Mr. Hulings served a Notice
09:47 20 of Expert Designation in this case, which you are
21 looking at. It's Exhibit 87. Do you see that?

22 A I do.

23 Q Okay. And he lists you as an expert in this
24 case?

09:47 25 A Yes.

09:47 1 Q So when -- when did you first learn that you
2 would be listed as an expert in this case?

3 A When I saw this filing.

4 Q And that was a couple days ago?

09:47 5 A Might have been yesterday.

6 Q Okay. And did you agree to be an expert in
7 this case?

8 MS. SANSALONE: I think it's the same
9 objection.

09:47 10 MR. HULINGS: Same objection.

11 MS. SANSALONE: Same instruction.

12 MR. HULINGS: Correct.

13 MS. WARDEN: Okay.

14 MR. NASSE: What's the privilege?

09:47 15 MR. HULINGS: Attorney-client.

16 MR. NASSE: If he's being retained as an
17 expert, that's --

18 MR. HULINGS: He's not being retained.

19 MR. NASSE: Or he's being asked to be an
09:48 20 expert.

21 MR. HULINGS: He's not being --

22 MR. NASSE: That's not privileged.

23 MR. HULINGS: He's not being retained.

24 MR. NASSE: How is that privileged?

09:48 25 MR. HULINGS: Do you want to go off the record

09:48 1 and we can talk about this?

2 MR. NASSE: No. Let's go -- Let's keep it on
3 the record.

4 I'd like to know what the -- what the basis
09:48 5 for a --

6 MR. HULINGS: Communications between -- We
7 represent Robert Mueller.

8 MR. NASSE: Uh-huh.

9 MR. HULINGS: He was their counsel. We're
09:48 10 discussing --

11 MR. NASSE: Not asking about his
12 representation to him as a lawyer. He's asking about
13 whether he's an expert in this case. That's the
14 question. A fact and -- and expert witness.

09:48 15 MR. HULINGS: So he is a factual witness. By
16 the way, we skipped over the -- you know, to the extent
17 such testimony can be characterized, he's being
18 designated as an expert, basically, in an abundance of
19 caution.

09:48 20 But communications between a client and
21 client's representative and the client's from a lawyer
22 are privileged. Feel free to -- to make your case, and
23 we can take it up later. But we're going to assert the
24 objection.

09:48 25 MR. NASSE: But he's being -- you're -- the

09:48 1 question is whether he's been asked to be an expert in
2 this case. What is the privileged communication there?

3 MR. HULINGS: His communications between
4 counsel about --

09:49 5 MR. NASSE: It's not the purpose of the legal
6 representation or legal advice.

7 MR. HULINGS: Make your objection and we'll
8 move on.

9 MR. NASSE: You're telling him not to answer
09:49 10 so I'll --

11 MR. HULINGS: You're perfectly free to
12 preserve this, and we can go talk about it with the
13 district court. It's fine.

14 MR. NASSE: Okay.

09:49 15 MR. HULINGS: But we're going to make our
16 objection, and you've asked the question. He's answered
17 it. You know, so let's move on.

18 MR. NASSE: So you -- but I told you, you
19 direct him not to answer the question on the grounds of
09:49 20 attorney-client.

21 MR. HULINGS: I'm directing him not to answer
22 questions about communications with his former client's
23 representatives. Yes.

24 MR. NASSE: Okay.

09:49 25 MS. WARDEN: And for the record, we disagree

09:53 1 A I don't.

2 Q Okay. Do you know who signed the tolling
3 agreement on behalf of Carlile Patchen?

4 A I don't.

09:54 5 Q And were you part of any conversations
6 surrounding the tolling agreement between Carlile
7 Patchen and Mr. Mueller?

8 MS. SANSALONE: I'm going to object. And to
9 the extent that that calls for communication involving
09:54 10 the firm's general counsel, outside counsel, anything
11 related to that claim, the professional liability
12 carrier, I'm going to instruct you not to answer based
13 on privilege. Anything outside that, you can feel free
14 to answer.

09:54 15 A Yeah. I'm not sure where we are. Again, the
16 question is?

17 Q Are -- Have you been informed of Mr. Mueller's
18 intent to file a malpractice lawsuit against Carlile
19 Patchen?

09:54 20 MR. HULINGS: Objection.

21 MS. SANSALONE: Again, same -- same objection.
22 Same instruction. I think you need -- If you could
23 break that down by someone outside. You know, you're
24 hitting on privilege.

09:55 25 MS. WARDEN: Okay.

09:55 1 MS. SANSALONE: Do you understand what
2 I'm saying here?

3 MR. NASSE: To be clear: We're not seeking
4 any privileged communication.

09:55 5 MS. SANSALONE: No, I understand.

6 MR. NASSE: We've restricted our focus.

7 MS. SANSALONE: So if you can break the
8 question down to -- to the extent -- I don't -- I don't
9 mean to do your job here or give a speaking objection.

09:55 10 But I'm very mindful of this, especially in federal
11 court. But...

12 BY MS. WARDEN:

13 Q Have you had any -- any direct conversations
14 with Mr. Mueller in the past year?

09:55 15 MR. HULINGS: Objection. That --

16 A In the past --

17 MR. HULINGS: The existence of communications
18 directly with Mr. Mueller, that fact, you can answer
19 that. Otherwise, the content in any communications with
09:55 20 Mr. Mueller, we'll object.

21 A I don't believe so.

22 Q Okay. And has -- has -- Have you provided
23 Mr. Mueller with any promises regarding your testimony
24 in this case?

09:56 25 MR. HULINGS: So, first of all, vague as to

09:56 1 "promises." But also we're going to object on the basis
2 of privilege.

3 MS. SANSALONE: And I'm going to -- I'm going
4 to object only in the sense of you're talking to a
09:56 5 40-plus-year-old lawyer who has an ethical obligation
6 and a legal duty to tell the truth. It's, I guess, a
7 little offensive to ask a 40-year-old ethical lawyer
8 whether his -- his testimony is going to be swayed by
9 promises relative to a legal malpractice claim.

09:56 10 MS. WARDEN: Okay.

11 MS. SANSALONE: It's objective.

12 MS. WARDEN: I ask that you not have a
13 speaking objection. It's supposition.

14 MS. SANSALONE: I know. But it's -- it's an
09:56 15 offensive question to a 40-year-old lawyer -- I mean, a
16 40-year-plus lawyer who has never had an ethical
17 violation to think that his testimony is going to be
18 swayed in that regard. Sorry. I just get defensive of
19 my lawyer clients here.

09:57 20 A I would prefer to think of me as a 40-year-old
21 lawyer, but --

22 MS. SANSALONE: Right. 40-plus-year-old
23 practicing lawyer.

24 A -- be that -- be that as it may.

09:57 25 Q Okay. Did -- did Mr. Mueller express any

09:57 1 concerns to you regarding the legal advice that you
2 provided to him?

3 MR. HULINGS: Same -- same objection. It's
4 privileged.

09:57 5 MS. SANSALONE: He's objected to privilege, so
6 you're on notice, but not to answer.

7 THE WITNESS: I --

8 MR. HULINGS: Instruct you not to answer.

9 THE WITNESS: Okay. I was going to say.

09:57 10 MS. SANSALONE: Okay.

11 BY MS. WARDEN:

12 Q Handing you what's previously been marked
13 Exhibit 27.

14 MS. SANSALONE: Thank you.

09:58 15 Before we go on to the next -- looks like a
16 new topic. I understand that there is a protective
17 order in this case.

18 MS. WARDEN: Yes.

19 MS. SANSALONE: Okay. I -- I just would ask
09:58 20 that anything related to a tolling agreement or a
21 purported alleged claim against my client be designated
22 as confidential. I mean, I don't think it's relevant to
23 this action and I think it's a highly sensitive subject.

24 MR. NASSE: I think we would ask for
09:58 25 production of the tolling agreement.

10:05 1 Policy Services was limited and I think we had some
2 contact in 2018.

3 Q So did -- did you ever do a -- a disengagement
4 letter?

10:05 5 A No.

6 Q Okay. But if you had to -- to date when your
7 representation of Policy Services ended, when would you
8 put that at?

9 MR. HULINGS: So objection to the extent --
10:05 10 Instruction not to answer to the extent that that --
11 that question goes to any time period after
12 December 2018.

13 THE WITNESS: The objection again.

14 MR. HULINGS: So the privilege waiver goes
10:05 15 through 2018. So to the extent that it involves
16 anything after 2018, we're objecting and instructing you
17 not to answer.

18 So you'll probably have to read the question
19 again. But to the extent the question applies to the
10:06 20 time period before, you know, including and before
21 December 2018, that's what you can answer.

22 BY MS. WARDEN:

23 Q In December 2018, were you representing Policy
24 Services?

10:06 25 A There -- there were -- As you point out, there

10:10 1 A He was Of Counsel at the time.

2 Q Okay. Did that change at some point through
3 your representation of Mr. Mueller?

4 A No.

10:10 5 Q Mr. Federico was always Of Counsel?

6 A Correct.

7 Q Okay. And are you aware of when Mr. Federico
8 stopped representing Policy Services?

9 MR. HULINGS: So same objection and
10:10 10 instruction. You can answer to the extent it applies to
11 December of 2018 and before.

12 A Same answer. I don't -- you know, we -- we
13 stopped actively representing them sometime in 2018.
14 And they certainly could have called to ask a question
10:10 15 or to make an inquiry, but we weren't drafting anything
16 for them after that date.

17 Q Who was the lead lawyer on the -- on Policy
18 Services?

19 A I was the lead lawyer.

10:11 20 Q Any other attorneys at Carlile Patchen work on
21 work for Policy Services?

22 A Not that I recall.

23 Q Okay. And any paralegals that you remember?

24 A Yes.

10:11 25 Q Who?

10:13 1 broker/dealer?

2 A Broker/dealer, yes.

3 It was a limited purpose broker/dealer, which
4 I don't even think exists anymore under the code. And
10:13 5 we advised that it would not accomplish --

6 MR. HULINGS: I'm going to stop and -- and
7 object on the basis of attorney-client privilege.
8 I know you're asking in terms of Policy Services. We
9 haven't -- You know, we don't agree that -- you know,
10:13 10 I think this is going to be litigated. We don't agree
11 that the -- the representation was limited to Policy
12 Services.

13 And we have waived privilege as to drafting of
14 PPMs and other materials provided to investors. So
10:13 15 communications that concern other matters, other than
16 materials provided to investors still covered by the
17 privilege waiver is not subject to the privilege waiver,
18 and so it's also not relevant.

19 But -- so we're going to object and instruct,
10:14 20 to the extent this line of questioning goes to any
21 communications with Mr. Mueller concerning -- concerning
22 any matter other than preparation of documents presented
23 to investors.

24 MS. WARDEN: Okay. The SEC doesn't agree. I
10:14 25 mean, you proffered an advice-of-counsel defense, and so

10:14 1 we're entitled to ask questions about the scope of the
2 representation.

3 MR. HULINGS: And we're not going to change
4 that on the fly in the middle of a deposition. So if
10:14 5 you want to maintain it for the record --

6 MS. WARDEN: That's my objection.

7 MR. HULINGS: -- you want to take it to The
8 Court, you can do that.

9 But the objection and instruction stands.

10:14 10 BY MS. WARDEN:

11 Q I'm going to hand you, for the record, it's
12 Tab 1, which I'm going to mark Exhibit 88. 88.

13 I don't have one for you.

14 MR. PRITIKIN: That's fine.

10:14 15 (Deposition Exhibit 88 was marked for
16 identification.)

17 BY MS. WARDEN:

18 Q Take a minute to just briefly go through
19 Exhibit 88, Mr. Concilla.

10:15 20 A Okay.

21 Q Okay. At some point did you work on an S-1
22 offering for Policy Services?

23 A Yes.

24 Q Okay. And when did that begin?

10:15 25 A In -- in late 2014. Well, maybe fall of 2014,

11:05 1 on August 21st, 2015, at 9:05 a.m., do you see where
2 Mr. -- Oh, where you wrote to Mr. Mueller -- No. Hold
3 on. Sorry. Sorry.

4 The top of the page, so 0002717, Mr. Mueller
11:06 5 wrote to you, "By the way, we just had a card from Idaho
6 telling us that our annual report and renewal for DWA is
7 coming in October. It was my understanding that our
8 settlement with them required us to withdraw those
9 filings months ago."

11:06 10 Do you know what Mr. Mueller is talking about?

11 A Vaguely.

12 Q What?

13 A That -- that -- that --

14 MR. HULINGS: So hold on. We talked about
11:06 15 this document before. I'm going to object that
16 communications regarding filings with State Securities
17 Boards are not part of the privilege waiver. They are
18 also entirely irrelevant to any claim in this case.
19 This is pure fishing.

11:06 20 And because -- because it is also outside the
21 scope of the privilege waiver, we are going to object
22 and instruct Mr. Concilla not to answer, other than
23 describing what is on the page.

24 MS. WARDEN: So you produced this document.

11:06 25 MR. HULINGS: Right. And remember, I snapped

11:07 1 it back. And -- and we -- I made an objection on the
2 record when it came up with Mr. Mueller and said that
3 this is -- that there was -- I then produced a redacted
4 version of this same document and asked that we use the
11:07 5 redacted version.

6 It -- it -- it doesn't matter. For purposes
7 of today --

8 MS. WARDEN: Uh-huh.

9 MR. HULINGS: I'm instructing him not to
11:07 10 answer anything other than what's on the page. The --
11 we've talked about this at length. Communications about
12 State Securities Board filings are -- are not -- A, not
13 relevant. I mean, just wildly out of scope of your
14 allegations. And, two, are not part of our privilege
11:07 15 waiver. So, again, we're not going to change that in --
16 on the fly in the middle of a deposition. I've made the
17 objection. I've made the instruction. You can preserve
18 whatever rights you want. We'll deal with it later.

19 MR. NASSE: No. I mean, no. For the record,
11:07 20 we disagree. Obviously, we believe it's relevant
21 because the advice goes to scienter and whether he --
22 and so that's all his scienter and his advice from this
23 counsel. So, obviously, we disagree. We're going to
24 obviously raise it with The Court.

11:08 25 MR. HULINGS: Understood. That's -- that is

11:08 1 not something Mr. Concilla is going to resolve.

2 MR. NASSE: Agreed.

3 BY MS. WARDEN:

4 Q Mr. Concilla, did you provide advice to
11:08 5 Mr. Mueller regarding the Idaho State Securities Board?

6 MR. HULINGS: You can answer that question.

7 A Yes.

8 Q And what advice did you provide?

9 MR. HULINGS: He cannot answer that question.

11:08 10 Objection. And instruct him not to answer.

11 It's privileged.

12 MS. WARDEN: Okay. The SEC disagrees with
13 your instruction.

14 BY MS. WARDEN:

11:09 15 Q If you can turn to Page 2 of that email,
16 Mr. Concilla.

17 A Yes.

18 Q You write -- Directing your attention to where
19 you say, "I don't believe you're using any finder's fees
11:09 20 so it would be only the commissions. Question two is
21 more complicated. There's a fee that is paid to dR for
22 fund management, but I don't believe there's any direct
23 compensation to you as an executive."

24 What did Mr. Mueller inform you regarding
11:09 25 finder's fees?

11:38 1 Q And the dGRD PPM was not an SEC filing,
2 correct?

3 A Correct.

4 MS. WARDEN: Okay. We can take a break.

11:38 5 THE VIDEOGRAPHER: Okay. And so we are going
6 off the record at 11:39 a.m.

7 (Recess taken.)

8 THE VIDEOGRAPHER: We're back on the record at
9 12:03 p.m.

12:02 10 BY MS. WARDEN:

11 Q Mr. Concilla, I had just a quick followup on
12 Exhibit 94, which is that Investor Presentation, if you
13 can pull that out. MUELLER-002816 through 2851.

14 If you can turn to -- they're not numbered,
12:02 15 but it's MUELLER-2838. It says Private Equity Fund at
16 the top.

17 A Uh-huh.

18 Q Are you there? Okay. Perfect.

19 And you previously testified that you provided
12:03 20 legal advice on this deeproot -- draft deeproot Investor
21 Presentation.

22 A Yeah.

23 Q Exhibit 94, correct?

24 A Yes.

12:03 25 Q Okay. At the bottom of 2838, it says, "All

12:03 1 principal is securitized or backed up by the assets of
2 the Fund."

3 Do you see that?

4 A Yes.

12:03 5 Q If you learn that the Funds did not have any
6 assets, would that statement still be accurate?

7 MR. HULINGS: Objection. Hypothetical. Calls
8 for facts not in evidence. Calls for speculation. And
9 it's vague.

12:03 10 But you can answer, if you can.

11 A Yes.

12 Q If you learn that the assets -- the Fund did
13 not have any assets, that statement would still be
14 accurate?

12:04 15 A No, it would not be accurate. It would not be
16 accurate.

17 Q It would not be accurate?

18 A Would not be accurate.

19 Q Okay.

12:04 20 MR. HULINGS: That happened a little quickly.
21 Just give me a second to --

22 THE WITNESS: Okay.

23 MR. HULINGS: -- interpose the objections.

24 All the same objections to the previous
12:04 25 question we'll assert to the question that was just

12:04 1 asked.

2 BY MS. WARDEN:

3 Q And why would it not be accurate?

4 MR. HULINGS: Same objections.

12:04 5 A Because this would be -- I'm sorry. But
6 you're saying if there were no assets, would this be
7 accurate? It -- of course not. I mean, it -- it -- it
8 really speaks for itself. I mean, I -- Why would it not
9 be accurate?

12:04 10 Q Would it be a misrepresentation then?

11 MR. HULINGS: Objection.

12 A It would not be accurate.

13 Q Okay.

14 MR. HULINGS: So it would call -- Vague as to
12:04 15 "misrepresentation." Calls for a legal conclusion.
16 Calls for speculation. Lack of foundation. Vague.
17 You can answer.

18 THE WITNESS: I did.

19 MR. HULINGS: Just got to preserve the
12:04 20 objections for --

21 THE WITNESS: Yeah, I -- No, I -- I
22 understand.

23 BY MS. WARDEN:

24 Q If you learned that the Funds, again, did not
12:05 25 have any assets, would you advise Mr. Mueller to amend

12:06 1 MS. WARDEN: Oh, yeah.

2 BY MS. WARDEN:

3 Q Did Mr. Mueller ever tell you that the 575 or
4 dGRD Fund never held any assets?

12:06 5 MR. HULINGS: So objection. To the extent
6 that that calls for testimony regarding a communication
7 after December 2018, you're instructed not to answer
8 anything that takes place after that date. It's also
9 pretty vague.

12:06 10 But you can answer.

11 A Okay. This -- this -- this was accompanied by
12 an email that was dated 2015, I believe. So as of this
13 date, no.

14 Q Okay. Let's make sure we're accurate. As of
12:06 15 -- the email is Exhibit 93?

16 A I believe so, yes.

17 Q Which is August --

18 MS. SANSALONE: Exhibit 93 is September 24th,
19 2015.

12:07 20 BY MS. WARDEN:

21 Q So as of September 24th, 2015, is it fair to
22 say Mr. Mueller never told you that the 575 Fund and
23 dGRD Fund never held any assets?

24 MR. HULINGS: Objection. Vague.

12:07 25 A No. He never told me that it didn't hold any

12:07 1 assets as of that date.

2 Q And if that were the case, would you have
3 expected him to tell you that?

4 MR. HULINGS: Hold on. Objection. Calls for
12:07 5 speculation. Lack of foundation. Hypothetical. Vague.

6 A Yes.

7 Q Direct your attention to the third sentence,
8 under Class B Shares, "Preferential\priority rights
9 receive dividends or distributions of capital," in the
12:07 10 parenthetical, "(Priority Return)."

11 A We're back -- that's Page 38?

12 Q Yes.

13 A Okay.

14 Q Sorry. Page 2838.

12:08 15 A Yes.

16 Q Okay. Do you see where it says, "Preferential
17 priority rights receive dividends or distributions of
18 the capital (Priority Return)"?

19 A Yes.

12:08 20 Q Okay. If you -- Did Mr. Mueller ever tell you
21 that the Funds offered new classes of shares?

22 MR. HULINGS: Objection. Vague as to time.

23 And an instruction that, anything after December 2018,
24 instruct him not to answer. Objecting on privilege

12:08 25 grounds.

12:11 1 Q Okay. Is that a synonym for a Reg D?

2 A Yes.

3 Q And at the bottom, do you see it's dated
4 September 1, 2015?

12:11 5 A Yes.

6 Q Okay. So I can represent to you that in
7 Mr. Mueller's interrogatory responses, he indicated that
8 Exhibit 36 that you're looking at --

9 A Yes.

12:11 10 Q -- was operative between May 2015 and
11 May 2018. So were you representing Policy Services
12 between -- at any point between May 2015 and May 2018?

13 A Periodically.

14 Q So is the --

12:11 15 A Yes.

16 Q -- answer "Yes"?

17 A Yes.

18 Q Okay.

19 A From time to time.

12:11 20 Q All right. And do you recall advising Policy
21 Services with respect to Exhibit 36?

22 MR. HULINGS: Objection. Vague.

23 A Not -- not specifically.

24 Q Do you regard -- do you recall providing legal
12:12 25 advice with respect to the 575 PPMs?

12:12 1 A Yes.

2 Q Okay. And is Exhibit 36 one of the 575 PPMs
3 that you provided advice for?

4 A I'm -- I'm unaware of there being more than
12:12 5 one 575 Fund.

6 Q Okay. All right. So turning your attention
7 to Page 6.

8 A Page -- Page 6 as in the numbering pages or in
9 the -- in the --

12:12 10 Q Sorry. That was my PDF Page 6. So 14502.
11 Hold on. So page 6 of 13 on the bottom. So
12 SEC-DEEPROOT-E-0014505.

13 A Yeah. Got it. Yes.

14 Q Are you aware of more than one 575 Fund PPM?

12:13 15 A I am -- I am not aware of more than one
16 575 PPM.

17 Q Did Mr. Mueller ever tell you that there was
18 more than one 575 PPM?

19 A I don't recall.

12:13 20 Q Okay. All right. So if you look at the
21 bottom of Bates 14505, it -- Under the category, Life
22 Policies, it says, "We will invest in Life Policies, AKA
23 Life Settlements, which are sales to third parties of
24 existing life insurance contracts held on insureds who
12:13 25 are 65 years of age or older."

12:13 1 Do you see that?

2 A Yes.

3 Q Okay. Did Mr. Mueller inform you that the
4 575 Fund never invested in or owned any life policies?

12:14 5 MR. HULINGS: Objection. That assumes
6 incorrect facts not in evidence. Calls for -- So based
7 on -- on -- on that, we object. It's also vague.

8 BY MS. WARDEN:

9 Q You can answer.

12:14 10 A Oh, okay. No, he did not.

11 Q Did Mr. Mueller seek legal advice from you
12 regarding whether the 575 Fund never investing in or
13 owning any life policies was adequately disclosed in
14 Exhibit 36?

12:14 15 MR. HULINGS: So objection, based -- based on
16 assuming facts not in evidence. Assuming false or
17 inaccurate basis for the question. It's also -- so that
18 makes it vague and misleading.

19 You can answer, if you can.

12:14 20 Q Do -- do you need me to repeat the question?

21 MS. SANSALONE: Or you can read it right
22 there.

23 A Not -- not that I recall specifically.

24 Q Did Mr. Mueller seek legal advice from you
12:15 25 regarding whether the 575 Fund never investing in or

12:16 1 through December 31, 2018. So you don't need to caveat.

2 A Thank you.

3 Q Okay. So let me reask the question and we'll
4 take it from there.

12:16 5 Did Mr. Mueller seek legal advice from you
6 regarding whether the 575 Fund never investing in or
7 owning any life policies was adequately disclosed in a
8 575 PPM at any time?

9 MR. HULINGS: So we're going to object. It
12:17 10 assumes facts not in evidence. Object that the
11 underlying factual assertion is not accurate. Object
12 that it's vague.

13 You can answer.

14 A No.

12:17 15 Q Did you provide Mr. Mueller with legal advice
16 regarding whether the 575 Fund never investing in or --
17 or owning any life policies was adequately disclosed in
18 Exhibit 36?

19 MR. HULINGS: Same -- same objections.

12:17 20 A No.

21 Q Did you provide Mr. Mueller with legal advice
22 regarding whether the 575 Fund never investing in or
23 owning any life policies was adequately disclosed in a
24 575 PPM at any time?

12:17 25 MR. HULINGS: Same objections.

12:17 1 A Isn't that the same question?

2 Q No. One is grounded in Exhibit 36, and one is
3 saying at any time.

4 MR. HULINGS: Asked and answered.

12:18 5 A No.

6 Q Okay. Did Mr. Mueller inform you that the
7 life policies were owned and acquired by Policy
8 Services?

9 MR. HULINGS: Objection. Vague.

12:18 10 You can answer.

11 A We saw a previous email where he says they
12 have interests in life settlements. Policy Services has
13 interests in life settlements. So to the extent that in
14 his email he told me they had interests in life
12:18 15 settlements, the answer would be yes.

16 Q Did Mr. Mueller ever tell you that the life
17 policies purportedly held by the 575 and dGRD Fund were
18 owned by Policy Services?

19 A No.

12:19 20 Q Did Mr. Mueller seek legal advice from you
21 regarding whether Policy Services owning the life
22 policies was adequately disclosed in Exhibit 36?

23 A No.

24 Q Did Mr. Mueller seek legal advice from you
12:19 25 regarding whether Policy Services owning the life

12:19 1 policies was adequately disclosed in a 575 PPM at any
2 time?

3 A I'm -- I'm sorry. I don't understand the
4 distinction in your question. But the answer is no.
12:19 5 I mean, you -- It seems like the same question over and
6 over.

7 Q I know. So the first question is -- is asking
8 whether he told you about whether a disclosure was
9 adequate in Exhibit 36. And then the second question is
12:19 10 whether he told you a disclosure was adequate at any
11 time, like, in any subsequent PPM that you may or may
12 not be aware.

13 MR. HULINGS: So to the extent there's a
14 question there, it's vague and compound. Maybe you want
12:20 15 to ask that one again.

16 A No.

17 Q Did you provide Mueller -- Mr. Mueller with
18 legal advice regarding whether Policy Services owning
19 the life policies was adequately disclosed in
12:20 20 Exhibit 36?

21 A No.

22 Q Did you provide Mr. Mueller with legal advice
23 regarding whether Policy Services owning the life
24 policies was adequately disclosed in a 575 PPM at any
12:20 25 time?

12:20 1 A No.

2 Q Did Mr. Mueller inform you that Policy
3 Services did not grant any ownership interest in the
4 life policies to the 575 Fund?

12:20 5 MR. HULINGS: So hold on. That -- that's a
6 different version of the question. I'm objecting to
7 facts -- assuming facts not in evidence. The factual
8 assertion is inaccurate. And it's a vague question.
9 You can answer.

12:20 10 A No.

11 Q Did Mr. Mueller seek legal advice from you
12 regarding whether the fact that Policy Services did not
13 grant any ownership interest in the life policies of the
14 575 Fund was adequately disclosed in Exhibit 36?

12:21 15 MR. HULINGS: That's the same -- the same
16 objections. That's -- assumes facts not in evidence.
17 It's based on a factual assertion that is false and is
18 vague and misleading.

19 A No.

12:21 20 Q Did Mr. Mueller seek legal advice from you
21 regarding whether the fact that Policy Services did not
22 grant any ownership interest in the life policies of the
23 575 Fund was adequately disclosed in a 575 PPM at any
24 time?

12:21 25 MR. HULINGS: Same objections. Asked and

12:21 1 answered.

2 A No. It's really -- Thank you.

3 Q Did you provide Mr. Mueller with legal advice
4 regarding whether the fact that Policy Services did not
12:21 5 grant any ownership interest in the life policies of the
6 575 Fund was adequately disclosed in Exhibit 36?

7 MR. HULINGS: Same objections. And asked and
8 answered.

9 A No.

12:21 10 Q Did you provide Mr. Mueller with legal advice
11 regarding whether the fact that Policy Services did not
12 grant any ownership interest in the life policies of
13 the 575 Fund was adequately disclosed in a 575 PPM at
14 any time?

12:22 15 MR. HULINGS: So asked and answered, which is
16 clear in the objections. It's -- Make sure I preserve
17 them. Assumes facts not in evidence. Based on a false
18 factual predicate. And vague and misleading. In
19 addition to the asked and answered.

12:22 20 A No.

21 Q Did Mr. Mueller inform you that there was no
22 legal relationship between the 575 Fund and Policy
23 Services prior to 2020?

24 MR. HULINGS: So same objections. Assumes
12:22 25 facts not in evidence. Based on a false factual

12:22 1 predicate. Vague and misleading as to multiple terms in
2 the question.

3 You can answer, if you can.

4 A I -- I -- That there was no relationship
12:22 5 between -- Is the question did he inform me that there
6 was no relationship between the two companies?

7 Q Between the 575 Fund and Policy Services prior
8 to 2020.

9 A I thought there --

12:22 10 MR. HULINGS: So same objections. It's also
11 argumentative at this point.

12 A No, he did not inform me they were not.

13 Q Did Mr. Mueller seek legal advice from you
14 regarding whether the lack of a legal relationship
12:23 15 between the 575 Fund and Policy Services prior to 2020
16 was adequately disclosed in Exhibit 36?

17 MR. HULINGS: Okay. So, again, assumes facts
18 not in evidence. Based on a false factual predicate.
19 It's vague and misleading. It's asked and answered.
12:23 20 And argumentative. Harassing at this point.

21 A What he said.

22 MR. HULINGS: You can answer, if you can.

23 A What he said.

24 Q So it --

12:23 25 A I -- I mean --

12:25 1 Q Did you provide legal advice to Mr. Mueller
2 regarding whether the lack of a legal relationship
3 between the 575 Fund and Policy Services prior to
4 2020 was adequately disclosed in a 575 PPM --

12:25 5 MR. HULINGS: Same objection.

6 MS. WARDEN: I'm not done.

7 BY MS. WARDEN:

8 Q -- at any time?

9 MR. HULINGS: Same objections.

12:25 10 A I'm sorry. I just don't understand the
11 distinction that you seem to -- The answer is no, I
12 guess. But it is vague. I mean, I -- I don't know.
13 Did I ever have a conversation with him?

14 Q It's actually very specific.

12:26 15 A Maybe on your side of the table.

16 Q After Exhibit 36 was finalized, did
17 Mr. Mueller ever inform you that he wanted to amend the
18 575 PPM?

19 A Not that I recall.

12:26 20 Q And I think you said you're not aware of
21 whether Exhibit 36 was amended, correct?

22 A I'm -- I'm not aware.

23 Q Okay. And do you recall -- Okay. Let me show
24 you another exhibit.

12:27 25 Okay. Handing -- I'm marking -- This is Tab

12:28 1 BY MS. WARDEN:

2 Q Did -- did you represent -- Your waiver
3 applies -- Mr. Mueller's waiver applies to
4 December 2018. December 31, 2018, right?

12:28 5 A Uh-huh.

6 Q So did you represent Policy Services in 2018?

7 A Yes.

8 Q Okay. Mr. Mueller's interrogatory response
9 represented that this PMM was in effect between May 2018
12:29 10 and November 2019. So you already said that you did not
11 advise Policy Services on this PPM, right; Exhibit 97?

12 A Yeah.

13 MR. HULINGS: So there's -- Let me object to
14 that. All of wind up to the question being
12:29 15 argumentative. The question is just, Did you advise him
16 on this PPM? Is that the question?

17 BY MS. WARDEN:

18 Q Did you advise Mr. Mueller on Exhibit 97?

19 A I don't believe so.

12:29 20 Q Do you know who did?

21 A I don't.

22 Q Handing you what's been previously marked
23 Exhibit 5. Do you recognize this document,
24 Mr. Concilla?

12:30 25 A No.

12:30 1 Q Okay. It's dated September 16, 2019. Were
2 you representing Policy Services on that date?

3 A Not to my knowledge.

4 Q Did you advise Policy Services on exhibit --
12:30 5 on Exhibit 5?

6 MR. HULINGS: So that's a -- that's a little
7 vague. It's also technically within the -- outside the
8 privilege waiver. But I think -- and I also think it's
9 been asked and answered: Did you advise on this

12:30 10 document?

11 But you can answer that question --

12 A No.

13 MR. HULINGS: -- I guess.

14 BY MS. WARDEN:

12:30 15 Q So let me reask it because it got muddy.

16 Did you advise Policy Services on Exhibit 5?

17 A Not that I recall.

18 Q Did you advise Robert Mueller on Exhibit 5?

19 MR. HULINGS: Objection. The same object --
12:31 20 same objections.

21 You can answer that.

22 A No.

23 Q Did Carlile Patchen advise Policy Services on
24 Exhibit 5?

12:31 25 MR. HULINGS: I'm going to make sure I'm going

12:31 1 to object to that being vague and misleading.

2 You can answer.

3 MS. WARDEN: I'll rephrase.

4 BY MS. WARDEN:

12:31 5 Q Did any attorneys at Carlile Patchen advise
6 Policy Services on Exhibit 5?

7 MR. HULINGS: So I'm going to -- Same
8 objections. Vague and misleading. If you want me to
9 clarify the basis for the objection, I can. But it's
12:31 10 vague and misleading.

11 A Not to my knowledge.

12 Q All right. I'm handing you what's been
13 previously marked Exhibit 6. Mr. Concilla, do you
14 recognize this document?

12:31 15 A No.

16 Q Okay. At the bottom, it says -- Do you see it
17 says dated February 26. Last amended January 1, 2021,
18 correct?

19 A Yes.

12:32 20 Q Okay. Did you advise Policy Services on
21 Exhibit 6?

22 A No.

23 MR. HULINGS: I mean, I'm going to object to
24 that as vague and misleading, but the answer stands.

12:32 25 BY MS. WARDEN:

12:32 1 Q Did you advise Robert Mueller on Exhibit 6?

2 MR. HULINGS: Same objections.

3 A Can -- can we assume that when you ask a
4 question it's Policy Services or deeproot or Robert
12:32 5 Mueller?

6 MR. NASSE: As long as Mr. Hulings won't
7 object that it's compound.

8 MR. HULINGS: For purposes of this -- I mean,
9 we can assume that for purposes of the question that it
12:32 10 applies to any of the three. We can unpack it later, if
11 you want. It's your question.

12 MS. SANSALONE: Did you advise anybody? Might
13 be an easier way to do it.

14 A The answer is still no.

12:33 15 Q Okay. And you were never aware of Exhibit 6,
16 correct?

17 MR. HULINGS: Objection. Vague.

18 A Not that I recall.

19 Q Handing you what's been -- what is Tab 13, and
12:33 20 I'm going to mark it Exhibit 98.

21 (Deposition Exhibit 98 was marked for
22 identification.)

23 MR. HULINGS: So the previous document, the --
24 is that -- that's Exhibit 6 --

12:33 25 MS. WARDEN: Yeah.

12:34 1 MR. HULINGS: -- from earlier.

2 And this is 97?

3 MS. WARDEN: 98.

4 BY MS. WARDEN:

12:34 5 Q Mr. Concilla, do you recognize this document?

6 A Yes.

7 Q Okay. And what is it?

8 A It's a PPM for deeproot Growth Runs Deep Fund
9 dated August 3rd, 2015.

12:34 10 Q Okay. And I can represent to you that in
11 Mr. Mueller's interrogatory responses, he indicated this
12 PPM was operative between August 2015 through May 2018.

13 Did you advise Policy Services on Exhibit 98?

14 MR. HULINGS: So objection to the statement
12:34 15 prior to the question assumes facts not in evidence.
16 It's vague.

17 You can answer.

18 A Yes.

19 Q If you can turn to Page 6 of 15, which is
12:34 20 SEC-DEEPROOT-E-0013407.

21 A Okay. 6 of 15, is that what you're referring
22 to?

23 Q Yes. Exactly.

24 A Okay.

12:35 25 Q Do you see the section, Life Policies?

12:35 1 A Yes.

2 Q Directing your attention to the first
3 sentence. "We will invest in Life Policies, AKA Life
4 Settlements, which are sales to third parties of
12:35 5 existing life insurance contracts held on insureds who
6 are 65 or older."

7 Did Mr. Mueller inform you that the dGRD Fund
8 never invested in or owned any life policies?

9 MR. HULINGS: So objection to assumes facts
12:35 10 not in evidence. It's a false factual predicate. Vague
11 and misleading.

12 You can answer.

13 A No.

14 Q Did Mr. Mueller seek legal advice from you
12:35 15 regarding whether the dGRD Fund never investing in or
16 owning any life policies was adequately disclosed in
17 Exhibit 38 (sic)?

18 MR. HULINGS: So for purposes of the next
19 several -- what I anticipate to be the next several
12:35 20 questions, when I say "Same objections," I mean
21 objections just asserted to the previous question.

22 A Not that I recall.

23 Q Well --

24 MR. HULINGS: And I assert the same objections
12:36 25 to the previous question for clarify.

12:36 1 BY MS. WARDEN:

2 Q The question is did Mueller seek legal advice
3 from you regarding whether the dGRD Fund never investing
4 in or owning any life policies was adequately disclosed
12:36 5 in the dGRD Fund in Tab -- in Exhibit 98?

6 MR. HULINGS: Same objections.

7 A Same answer. Not that I recall. I don't ever
8 recall having that conversation.

9 MR. HULINGS: Do you want to take a --

12:36 10 MS. WARDEN: We can take a break.

11 MS. SANSALONE: No. Go ahead.

12 BY MS. WARDEN:

13 Q Did Mr. Mueller seek legal advice from you
14 regarding whether the dGRD Fund never investing in or
12:36 15 owning any life policies was adequately disclosed in a
16 dGRD PPM at any time?

17 MR. HULINGS: So same objections. Asked and
18 answered.

19 A Not that I recall.

12:36 20 Q Did you provide Mr. Mueller with legal advice
21 regarding whether the dGRD Fund never investing or
22 owning in any life policies was adequately disclosed in
23 Exhibit 98?

24 MR. HULINGS: Same objections. Asked and
12:37 25 answered.

12:37 1 A Not that I recall.

2 Q Did you provide Mr. Mueller with legal advice
3 regarding whether the dGRD Fun never investing in or
4 owning any life policies was adequately disclosed in a
12:37 5 dGRD PPM at any time?

6 MR. HULINGS: Same objections.

7 A Same answer. Not that I recall.

8 Q Did Mr. Mueller inform you that the life
9 policies were owned and acquired by Policy Services?

12:37 10 MR. HULINGS: Objection. Vague.

11 A I don't understand the question. You -- you
12 -- Just ask it again.

13 Q Yeah. Did Mr. -- did Mr. Mueller ever tell
14 you that the life policies that were purportedly held by
12:38 15 the 575 and dGRD Fund were owned by Policy Services?

16 A No.

17 MR. HULINGS: Hold on.

18 THE WITNESS: I'm sorry.

19 MR. HULINGS: Objection that that is vague and
12:38 20 misleading. Assumes fact not in evidence. False
21 factual predicate. Asked and answered multiple times.
22 BY MS. WARDEN:

23 Q After Exhibit 98 was finalized, did
24 Mr. Mueller ever inform you that he wanted to amend the
12:38 25 dGRD PPM?

12:38 1 A Not that I recall.

2 Q And -- Okay. Handing you what I'll mark
3 Exhibit 99.

4 (Deposition Exhibit 99 was marked for
12:39 5 identification.)

6 MS. SANSALONE: Thank you.

7 BY MS. WARDEN:

8 Q This is Tab 32. SEC-DEEPROOT-E-0164786
9 through 0164803. Mr. Concilla, do you recognize this
12:39 10 document?

11 A It's the same as the previous exhibit.

12 Q It's different. It's -- it's a different
13 exhibit.

14 So I can represent to you that in
12:39 15 Mr. Mueller's interrogatory response, he indicated this
16 dGRD PPM was operative between May 2018 through
17 October 2019.

18 MR. HULINGS: So it assumes facts not in
19 evidence.

12:40 20 Is there a question?

21 MS. WARDEN: Yeah.

22 BY MS. WARDEN:

23 Q Did you advise Policy Services on Exhibit
24 91 -- 99?

12:40 25 A I -- I don't --

12:45 1 BY MS. WARDEN:

2 Q Do you recognize this document, Mr. Concilla?

3 A No.

4 Q So I can represent to you that, in

12:45 5 Mr. Mueller's interrogatory responses, he indicated

6 Exhibit 100 was operative between October 2019 through

7 August 2021. Did you advise Policy Services on

8 Exhibit 100?

9 MR. HULINGS: So object to the statement prior

12:45 10 to the question. Object to facts not in evidence. And

11 vague and misleading.

12 A No.

13 Q If you had advised on a PPM around

14 October 2019, would you have expected there to be emails

12:46 15 between you and Mr. Mueller?

16 MR. HULINGS: Calls for speculation. Lack of

17 foundation. Hypothetical. Vague and ambiguous.

18 Misleading.

19 MS. SANSALONE: I'll echo those same

12:46 20 objections.

21 A Yes.

22 MS. WARDEN: Do you want a break?

23 THE WITNESS: Is lunch here yet? If lunch

24 isn't here, then we should keep going, unless you

12:46 25 want --

12:49 1 a false hyp -- factual predicate. Vague and misleading.
2 Argumentative.

3 A I -- I -- Okay. This is dated September 1st,
4 2015, and then you gave me a date of 2017. So --

12:49 5 Q Uh-huh.

6 A -- I'm not sure. I don't understand the
7 question.

8 Q It's just a question of whether Muel --
9 Mr. Mueller informed you, right, at any time, okay, that
12:49 10 neither the 575 Fund nor Policy Services purchased any
11 new life insurance policies after April 2017?

12 MR. HULINGS: Same objections.

13 BY MS. WARDEN:

14 Q So you represented Mr. Mueller post
12:50 15 April 2017, correct?

16 A Yes.

17 Q Okay. Did Mr. Mueller ever tell you at any
18 time that neither the 575 Fund, nor Policy Services,
19 purchased any new life insurance policies after
12:50 20 April 2017?

21 THE DEFENDANT: Same objections.

22 A No. But I don't -- but it -- you -- you asked
23 me about this sentence, and that answer has nothing to
24 do with this sentence.

12:50 25 "We minimize this risk by limiting the capital

12:50 1 acquisition component of the company to 45 percent of
2 the asset portfolio." I don't understand the
3 connection. But the answer to that -- Okay.

4 Q Is?

12:50 5 A Is no.

6 Q Okay. Did Mr. Mueller seek legal advice from
7 you regarding whether the fact that neither the
8 575 Fund, nor Policy Services, purchasing any new life
9 insurance policies after April 2017 was adequately
12:51 10 disclosed in Exhibit 36?

11 MR. HULINGS: Objection. Same objections.
12 Asked and answered.

13 A No.

14 Q Did you provide Mr. Mueller with legal advice
12:51 15 regarding whether the fact that neither the 575 Fund,
16 nor Policy Services, purchasing any new life insurance
17 policies after April 2017 was adequately disclosed in
18 Exhibit 36?

19 MR. HULINGS: Same objections. Asked and
12:51 20 answered.

21 MS. SANSALONE: And asked and answered. Yeah.

22 A I -- No. I mean, again, I'm sorry. But to my
23 ear, you're asking the same question over and over and
24 over.

12:51 25 Q It's a slightly different question. And I

12:56 1 record at 12:57 p.m.

2 (Recess taken.)

3 THE VIDEOGRAPHER: Back on the record at
4 1:00 p.m.

12:59 5 BY MS. WARDEN:

6 Q Mr. Concilla, can we turn back to Exhibit 36.
7 It's the 575 PPM dated September 1, 2015, at the bottom.

8 A Okay.

9 Q Can you turn to Page 7 of 13.

12:59 10 A Okay.

11 Q The last paragraph. Capital Acquisition in
12 deeproot Tech. It says, "A capital acquisition is a
13 purchase of an internal affiliated investment position
14 in another enterprise, wherein such enterprise is
13:00 15 intended to enhance Company's reputability, safety, or
16 financials through joint venture, partnership, or
17 collaboration, or minimize pool risk, lower administrative
18 -- administrative overhead or expenses, or to develop
19 additional product lines."

13:00 20 Did Mr. Mueller inform you that the 575 Fund
21 did not purchase anything from the deeproot affiliates?

22 MR. HULINGS: Okay. So objection. Assumes
23 facts not in evidence. False factual predicate. Vague
24 and misleading. And argumentative.

13:00 25 A No.

13:00 1 Q Did Mr. Mueller seek legal advice from you
2 regarding whether the 575 Fund's failure to purchase
3 anything from the deeproot affiliates was adequately
4 disclosed in Exhibit 36?

13:01 5 MR. HULINGS: Same -- same objections as
6 asserted to the previous question. And asked and
7 answered.

8 MS. SANSALONE: Yeah. I think this is where
9 we get into where this is getting repetitive. If the
13:01 10 prior answer is no --

11 MS. WARDEN: This is different. We -- I --
12 I have --

13 BY MS. WARDEN:

14 Q My question is, Mr. Concilla, did Mr. Mueller
13:01 15 seek legal advice from you regarding whether the
16 575 Fund's failure to purchase anything from the
17 deeproot affiliates was adequately disclosed in
18 Exhibit 36?

19 MR. HULINGS: Same objections as to the
13:01 20 previous -- as asserted to the previous question. And
21 asked and answered.

22 A No.

23 Q Okay. Did Mr. Mueller inform you that he used
24 575 funds to pay the deeproot affiliates' expenses?

13:01 25 MR. HULINGS: So objection. Assumes facts not

13:01 1 in evidence. It is vague and misleading. And ambiguous
2 and argumentative.

3 And -- and you can answer, if you can.

4 A No.

13:01 5 Q Did Mr. --

6 A Not that I recall.

7 Q Did Mr. Mueller inform you that he used
8 575 Funds to provide deeproot affiliates with
9 interest-free loans?

13:02 10 MR. HULINGS: Okay. So let's -- running
11 through the Rules of Evidence in my head so we can get
12 them all.

13 That assumes facts not in evidence. It's a
14 false factual predicate. There is -- It is vague.

13:02 15 Misleading. Argumentative. Asked and answered.

16 A No.

17 MS. WARDEN: That's a brand new question.
18 It's not asked and answered.

19 MR. HULINGS: Oh, that's right. Well,
13:02 20 that's -- that's right.

21 THE WITNESS: Sort of.

22 MR. HULINGS: Yeah.

23 THE WITNESS: It's sort of a different
24 question. But only sort of.

13:02 25 BY MS. WARDEN:

13:07 1 through 0013236.

2 MR. HULINGS: So I'm going to object that this
3 document is dated -- Well, the previous testimony
4 established this is from 2020. So by definition, it's
13:07 5 outside the scope of the privilege waiver. But if
6 you're going to ask were -- were there any
7 communications about this document, I think you know the
8 answer. But we can do that.

9 BY MS. WARDEN:

13:07 10 Q Well, first, do you recognize this document,
11 Mr. Concilla?

12 A No.

13 Q All right. Did you have any communications
14 with Mr. Mueller regarding Exhibit 25?

13:07 15 A No.

16 Q I have a couple questions that's not about
17 this exhibit, so you can --

18 A Good.

19 Q -- put it away.

13:08 20 Did Mr. Mueller ever inform you that he did
21 not have a methodology or documented process to
22 accurately value life insurance policies to report to
23 575 and dGRD investors?

24 MR. HULINGS: Okay. So assumes facts not in
13:08 25 evidence. False factual predicate. Argumentative.

13:08 1 It's vague. It's misleading.

2 You can answer, if you can.

3 A I'm sorry. I don't know that I can. I mean,
4 "...ever inform you that he did not have a methodology."

13:09 5 The answer is no.

6 Q Okay. Did Mr. Mueller ever seek legal advice
7 from you regarding how he should calculate the
8 percentage ownership interest that the 575 Fund had in
9 life policies?

13:09 10 A No. His objections. No.

11 MR. HULINGS: Yes. Yes. Vague and ambiguous.

12 THE WITNESS: Yeah.

13 BY MS. WARDEN:

14 Q Did Mr. Mueller ever show you a methodology of
13:09 15 how he was valuing the life insurance policies owned by
16 the 575 and dGRD Funds?

17 MR. HULINGS: Vague and ambiguous. And asked
18 and answered.

19 A No.

13:10 20 Q Did Mr. Mueller ever inform you that there
21 were no internal finance controls at deeproot?

22 MR. HULINGS: So objection. Assumes facts not
23 in evidence. False factual predicate. Very
24 argumentative. Vague. Misleading.

13:10 25 You can answer, if you can.

13:10 1 A No.

2 Q And did Mr. Mueller ever seek legal advice
3 from you regarding whether the lack of internal
4 financial controls was adequately disclosed --

13:10 5 MR. HULINGS: So that's --

6 BY MS. WARDEN:

7 Q -- in the 575 PPM?

8 MR. HULINGS: So that's an extremely
9 argumentative question, so start -- start there this
13:10 10 time. Vague and ambiguous. Assumes facts not in
11 evidence. And false factual predicate. Asked and
12 answered.

13 BY MS. WARDEN:

14 Q Sorry. Can you answer, sir?

13:10 15 A No.

16 BY MS. WARDEN:

17 Q Did Mr. Mueller ever show you documented
18 internal financial controls of deeproot?

19 MR. HULINGS: Objection as to vague and
13:11 20 ambiguous. Argumentative.

21 THE WITNESS: And I think asked and answered.

22 MR. HULINGS: Asked and answered.

23 A No.

24 Q Did Mr. Mueller ever inform you that there
13:11 25 were -- he employed -- Strike that.

13:11 1 Did Mr. Mueller ever inform you that there
2 were no processes or procedures in place to ensure that
3 the valuation of the 575 and dGRD assets were accurate?

4 MR. HULINGS: Okay. So assumes facts not in
13:11 5 evidence. False factual predicate. It is
6 argumentative. It is vague. It is misleading. I think
7 it's been asked and answered.

8 MS. SANSALONE: It's been asked and answered.

9 A No.

13:12 10 Q And I assume -- Is it fair to say Mr. Mueller
11 did not seek legal advice from you regarding whether the
12 lack of processes or procedures in place to ensure the
13 valuation of the funds were adequately disclosed?

14 MR. HULINGS: Same objections as asserted to
13:12 15 the previous question, including asked and answered.

16 MS. SANSALONE: And I'm going to say something
17 else just to protect the record since you had asked for
18 additional time the other day.

19 This is -- I mean, this could have been done
13:12 20 so much more efficiently had these an -- these questions
21 been asked in the right way and not repetitive. So,
22 I mean, there's no way we're going to be on seven hours
23 at this point. So whatever time he needs, we need to
24 make sure it's accommodated because time is ticking.

13:12 25 MS. WARDEN: Okay. I'm going to object to the

13:18 1 MS. SANSALONE: Let's -- let's move forward.

2 BY MS. WARDEN:

3 Q Mr. Concilla, did Mr. Mueller inform you that
4 he would pay his investors in earlier funds, not the
13:18 5 575 or dGRD Funds with 575 and dGRD investor funds?

6 MR. HULINGS: All right. So vague and
7 ambiguous and argumentative. Assumes facts not in
8 evidence.

9 You can answer, if you can.

13:19 10 A Money is fungible. So wherever the money is
11 coming from, or if it's going into an account, it could
12 be used for whatever purpose.

13 But did we have a specific discussion about
14 what I think you're asking; paying old investors with
13:19 15 new investor money? We did not.

16 Q Okay. I'm going to reask it because it's --
17 it's -- that was muddy to me.

18 So did Mr. Mueller inform you that he would
19 pay his inventors with earlier funds --

13:19 20 A I've already --

21 Q -- with 575 and dGRD investor funds?

22 MR. HULINGS: Okay. So same objections as
23 asserted to the previous question. And asked and
24 answered.

13:19 25 A I'm -- I'm confused. You're saying his

13:19 1 investors in earlier funds? Okay. I thought these were
2 the first. I thought these were the only two funds, so
3 I guess, no. The answer is no.

4 Q Did Mr. Mueller ever seek legal advice --

13:20 5 A No.

6 Q -- regarding that issue?

7 A No.

8 MR. HULINGS: Same objections as to the
9 previous question.

13:20 10 BY MS. WARDEN:

11 Q Okay. Did Mr. Mueller inform you that he
12 would pay investors who owned fractionalized shares in
13 specific life settlement policies with 575 and
14 dGRD investor funds?

13:20 15 A I don't understand the question.
16 Fractionalized shares.

17 MR. HULINGS: I'm going to put a vague and
18 ambiguous --

19 THE WITNESS: Yeah.

13:20 20 MR. HULINGS: -- and argumentative objection
21 there.

22 BY MS. WARDEN:

23 Q Did Mr. Mueller ever tell you that he would
24 pay 575 or dGRD investors -- Sorry. That he would take
13:20 25 575 and dRG -- dGRD investor money and he would pay --

13:20 1 take that money and pay people who owned shares of the
2 life settlement policies owned by Policy Services?

3 MR. HULINGS: Okay. So hold on. There's a --
4 there's a lack of foundation. Calls for speculation.

13:20 5 It's argumentative. It's vague and ambiguous. It's
6 misleading. Assumes facts not -- not in evidence.

7 You can answer, if you can.

8 A I don't think I can. So if fractionalized who
9 were not investors in the -- in -- in the two funds?

13:21 10 MR. NASSE: Yes.

11 BY MS. WARDEN:

12 Q Correct.

13 A So we're paying people outside of the funds
14 with that money?

13:21 15 MR. HULINGS: Same objections.

16 A Yeah. No.

17 Q Okay. And did Mr. Mueller ever seek legal
18 advice regarding whether that was proper?

19 MR. HULINGS: Same objections as asserted to
13:21 20 the previous questions. And it's asked and answered.

21 MS. SANSALONE: This -- this is the perfect
22 example of the problem.

23 BY MS. WARDEN:

24 Q Okay. Let's do -- Handing you what's been
13:22 25 previously marked Exhibit 40, DEEPROOTFUNDS-005625.

14:22 1 MR. HULINGS: Which one is 36?

2 MS. WARDEN: The 575 PPM.

3 THE WITNESS: The September 2015.

4 MR. HULINGS: Got it.

14:23 5 Yeah. I think you do, but that's all
6 right. I have it. So...

7 MS. SANSALONE: Okay.

8 MR. NASSE: Familiar with that one.

9 THE WITNESS: You've memorized it.

14:23 10 MR. HULINGS: Familiar with that one. Seen
11 that one before.

12 THE WITNESS: You've memorized it.

13 BY MS. WARDEN:

14 Q Okay. And, Mr. Concilla, you -- you already
14:23 15 testified you -- you advised on exhibit -- You advised
16 Policy Services on Exhibit 36, correct?

17 A Yeah. Yeah. And I -- and I feel like I have
18 to clarify that answer. I advised on a -- on a 575 PPM
19 or -- in -- in September of 2015. Whether it's this one
14:23 20 or not, I don't know. I've seen a lot of PPMs that
21 I've never seen before.

22 Q Okay.

23 A Okay. So -- but, yes, I think.

24 Q Okay. So if you can turn to Page 10 of 15
14:24 25 I think.

14:27 1 A Xerox machines. Lighting. But that -- that
2 is my concept of nominal expenses.

3 Q Okay. Was it a normal part of your practice,
4 when you're advising on PPMs, to explain what
14:28 5 constitutes a nominal administrative expense to your
6 clients?

7 A Yes.

8 Q Did Mueller seek legal advice regarding what
9 types of expenses he believed fell under the category of
14:28 10 nominal administration expenses?

11 MR. HULINGS: Asked and answered. Vague and
12 ambiguous.

13 A I -- I -- I feel like we had discussions, but
14 I can't give you any specifics or relate it to a
14:28 15 particular -- Again, I think there's an email somewhere
16 where I discuss it.

17 Q Okay. Did Mr. Mueller inform you that the
18 Company Advance was not being tracked to ensure that it
19 was used for a business purpose?

14:29 20 MR. HULINGS: Okay. So argumentative.
21 Assumes facts not in evidence. False factual predicate.
22 Vague and ambiguous. Misleading.

23 A No.

24 Q So the Company Advance has this 20 percent
14:29 25 cap. Did -- did you ever advise Mr. Mueller as to how

14:29 1 he should track the -- the way Company Advance funds are
2 spent?

3 A I don't recall a specific discussion.

4 Q Did Mr. Mueller ever seek legal advice from
14:30 5 you regarding whether he should track the Company
6 Advance?

7 MR. HULINGS: I think that's asked and
8 answered. Vague and ambiguous.

9 BY MS. WARDEN:

14:30 10 Q I think -- Sorry. I did just ask that. I'll
11 strike that.

12 Did Mr. Mueller ever show you how he was
13 tracking expenses? Show you.

14 MR. HULINGS: Vague and ambiguous and asked
14:30 15 and answered, but you can answer.

16 A No.

17 Q Did Mr. Mueller inform you that there were not
18 protections and processes in place to ensure that
19 100 percent of 575 investors' principal would be
14:30 20 returned as promised in the PPM, Exhibit 40?

21 MR. HULINGS: Vague and ambiguous. And
22 I'm sorry. Could you repeat that question?

23 MS. WARDEN: Sure.

24 MR. HULINGS: I got lost in it.

14:31 25 MS. WARDEN: Sure.

14:32 1 MR. HULINGS: Vague and ambiguous. Assumes
2 facts not in evidence. Argumentative. Misleading.

3 A Operational expenses could be nominal
4 expenses.

14:32 5 Q Well, how -- how -- how would you define
6 operational expenses?

7 A Again -- again, expenses that are associated
8 with day-to-day operations. Did the electric bill get
9 paid? Did the phone bill get paid? Those are all
14:33 10 operational expenses.

11 Q Did Mr. Mueller inform you that he would use
12 575 and dGRD investor funds to pay off credit card
13 purchases for personal expenses?

14 MR. HULINGS: So vague and ambiguous. Assumes
14:33 15 facts not in evidence. Argumentative. Misleading.
16 You can answer.

17 A No.

18 Q And just to follow up, are -- are investor
19 payments operational expenses?

14:33 20 MR. HULINGS: Vague and ambiguous.
21 Argumentative. Calls for a legal conclusion.

22 A I think they could be.

23 Q And did Mr. Mueller inform you that 575 and
24 dGRD investor funds would be used to pay for investor
14:34 25 payments?

14:58 1 Q Did you have any conversations with
2 Mr. Mueller about whether investors would have an
3 ownership interest in the deeproot affiliates?

4 MR. HULINGS: Vague and ambiguous.

14:59 5 A No.

6 Q Okay. If you can turn to Exhibit 36 again.
7 It's the 575 PPM.

8 A Yeah.

9 Q If you could turn to Pages 7 through 8.

14:59 10 A Okay.

11 Q Okay. At the top of Page 8 -- Sorry. This is
12 SEC-DEEPROOT-E-0014507.

13 Do you see where it says, "deeproot Tech's
14 sole project is deeproot Pinball, LLC, which is
15:00 15 anticipated to be a multi-year project starting in
16 2016 or 2017. Capital acquisition in dP would consist
17 of the purchase of dP Class B Shares that Company will
18 hold."

19 Did Mr. Mueller inform you that the 575 or
15:00 20 dGRD Funds did not purchase any Class B Shares in
21 deeproot Pinball, LLC?

22 MR. HULINGS: So objection. Assumes facts not
23 in evidence. It's argumentative. It's vague and
24 ambiguous. And misleading.

15:00 25 You can answer it, if you can.

15:00 1 A No.

2 Q Okay. I'm showing you what's Tab 37 that I'll
3 mark as Exhibit 101.

4 (Deposition Exhibit 101 was marked for
15:01 5 identification.)

6 MS. SANSALONE: Thanks.

7 BY MS. WARDEN:

8 Q Do you recognize this, Mr. Concilla?

9 A Yes.

15:01 10 Q And what is it?

11 A It's my Declaration that I provided in this
12 matter.

13 Q And if you look at the second page, is that
14 your signature?

15:01 15 A Yes.

16 Q Okay. Why did you prepare this Declaration?

17 MR. HULINGS: Hold on. Hold on. Hold on.

18 So communications between Mr. Mueller's

19 counsel and his prior counsel are privileged. This

15:01 20 document is not privileged. But communications leading
21 up to the execution of this document are privileged. So
22 we are objecting to the question and instructing the
23 witness not to answer.

24 MS. WARDEN: The SEC opposes that instruction.

15:02 25 And I'm -- I'm asking for the -- for the facts that --

15:02 1 so the fact of why he -- he was asked.

2 MR. HULINGS: To the extent the facts of why
3 he was asked to sign a Declaration, to the extent that
4 involves any communications with counsel for

15:02 5 Mr. Mueller, that is privileged, and we're instructing
6 him not to answer. Document speaks for itself.

7 MR. NASSE: You're objecting. It's your
8 position that you have attorney-client regarding the
9 presentation of a factual Declaration. I just want to
10 make sure I'm understanding your objecting.

11 MR. HULINGS: We -- we are telling you that we
12 have --

13 MR. NASSE: That you put into evidence.

14 MR. HULINGS: We -- we have communications --

15:02 15 No.

16 MR. NASSE: You can have this fact --

17 MR. HULINGS: You can smirk if you want.
18 You're also burning your own time.

19 MR. NASSE: You've been putting this as a fact
15:02 20 witness. He's a fact witness.

21 MR. HULINGS: Correct.

22 MR. NASSE: You put a Declaration on it.

23 MR. HULINGS: Yes.

24 MR. NASSE: She can ask how -- why it was
15:03 25 prepared and those communications relating to those

15:03 1 preparations.

2 MR. HULINGS: I'm -- I'm glad that you think
3 that. And we disagree, and -- and --

4 MR. NASSE: Our objection is noted.

15:03 5 MR. HULINGS: Yes. But he's instructed not to
6 answer anything that involves discussions regarding how
7 this Declaration came to be.

8 BY MS. WARDEN:

9 Q Did you prepare this Declaration?

15:03 10 A No.

11 Q Who prepared it?

12 A My -- Matt Brown of this office. My former
13 partner.

14 Q At your request?

15:03 15 MR. HULINGS: Stop. Now you're -- now you're
16 asking for communications between him and his lawyer.

17 MS. SANSALONE: Yeah. That's a -- that's a
18 problem.

19 BY MS. WARDEN:

15:03 20 Q Okay. Did you review this Declaration for
21 factual accuracy?

22 A Yes.

23 Q Are there -- Okay. If you turn to the bottom
24 of Page 1, "I explained to the government officials that
15:04 25 I could not recall ever having such a conversation with

15:06 1 or law.

2 Q Okay. Would payments of existing investors
3 solely from new investor funds be proper?

4 MR. HULINGS: Objection. Vague. Ambiguous.

15:06 5 Calls for a legal conclusion.

6 A I just want to make sure I understand.

7 MR. HULINGS: Lack of foundation. Calls for
8 speculation.

9 Give me more time and I'll think of more --

15:06 10 I'll think of more administrative rules.

11 MS. SANSALONE: Can you see the question?

12 THE WITNESS: I don't. I don't. It -- it
13 goes --

14 MS. WARDEN: Here, I'll repeat it.

15:06 15 MS. SANSALONE: Oh, no, no. It's right here.
16 It's probably easier for him to read it.

17 Okay. "Would payments of existing investors
18 solely from new investors be proper?"

19 A No.

15:06 20 Q And why not?

21 A Because it says "solely."

22 Q Yes. So -- so why would payments to existing
23 investors only from new investor funds be improper?

24 MR. HULINGS: Okay. Hold on.

15:06 25 It calls for a legal conclusion. Lack of

15:06 1 foundation. Calls for speculation. Vague and
2 ambiguous.

3 You can answer.

4 A I believe that would -- that would be kind of
15:07 5 the hallmark of a Ponzi scheme where you're -- where
6 you're not -- you're not investing the money in a way
7 that's creating an investment return but, instead,
8 you're using new money from new investors to pay old
9 investors, so there is no enterprise.

15:07 10 Q If revenue or funds from other sources is not
11 sufficient to cover obligations or returns to existing
12 investors, is it proper to use new investor funds to pay
13 existing investors?

14 MR. HULINGS: So it calls for a legal
15:07 15 conclusion. It's vague and ambiguous. Argumentative.

16 A I believe it does not. I -- I think I
17 answered that properly. I believe you could not do that
18 under those circumstances, or that it would be improper,
19 I guess, is -- in my mind.

15:08 20 Q Did Mr. Mueller ever ask you that question?

21 MR. HULINGS: Vague and ambiguous. And
22 obviously instruct him not to answer if it -- if that
23 conversation took place outside the waiver period.

24 A I don't think I can answer that question.

15:08 25 Q Based upon attorney-client privilege --

15:08 1 MR. NASSE: Within the waiver period.

2 BY MS. WARDEN:

3 Q Within the waiver period, did you ever -- Did
4 Mr. Mueller ever ask you the question that if revenue or
15:08 5 funds from other sources is not sufficient to cover
6 obligations or returns to existing investors, is it
7 proper to use new investor funds to pay existing
8 investors?

9 MR. HULINGS: Vague and ambiguous.

15:09 10 A No.

11 Q And then, Mr. Concilla, you didn't have access
12 to deeproot's bank accounts at any time, correct?

13 A No. But when the SEC subpoenaed that bank
14 information, it came through this office. So I had
15:09 15 that.

16 MR. HULINGS: During -- during the --

17 MS. WARDEN: Yeah, that's separate.

18 MR. HULINGS: -- investigation period.

19 THE WITNESS: Right. Right.

15:09 20 MR. HULINGS: So that, we'll, yeah, instruct
21 you not to answer.

22 BY MS. WARDEN:

23 Q Yeah. I don't want to know --

24 MR. HULINGS: Unless you mean --

15:09 25 BY MS. WARDEN:

17:53 1 Let me just find it. Just a second.

2 A I can ask the question and then answer it.

3 MS. SANSALONE: Might have been more efficient
4 all day if we'd done it that way.

17:53 5 THE WITNESS: Might have been more efficient.
6 Yeah. Right.

7 BY MR. HULINGS:

8 Q All right. Let's look at Exhibit 36.

9 A Okay.

17:53 10 MS. SANSALONE: Oh, right there on the top.

11 THE WITNESS: Yeah. All right.

12 BY MR. HULINGS:

13 Q Look at Page 6 of 13.

14 A Okay.

17:53 15 Q Bottom of page says Life Policies. Do you see
16 that?

17 A Yeah.

18 Q It says, "We will invest in life policies."

19 A Yes.

17:54 20 Q Does that say that the 575 Fund will purchase
21 and maintain legal title to individual life insurance
22 policies?

23 A It implies that.

24 Q Okay. Does -- does that --

17:54 25 A I'm sorry.

17:54 1 Q Does it -- does it prevent the 575 from --
2 from investing in another entity that then owned the --
3 the life insurance policies?

4 MS. WARDEN: Objection. Calls for
17:54 5 speculation. Vague.

6 A It -- it -- it -- Again, as long as there is
7 a -- a possessory interest, as long as the 575 Fund has
8 some document which says you owe -- you own this, and
9 that's --

17:54 10 Q Okay. So that sum document, does that
11 document have to be a formal written contract signed by
12 one entity and signed by the other entity?

13 A In my judgment, yes.

14 Q All right. Is it -- would it be permissible
17:55 15 under this description of invest that there is some
16 other document that tracks -- which tracks the ownership
17 interests in particular funds? Does it have to be a
18 contract?

19 A It does -- I don't believe it has to be a
17:55 20 contract, but it has to be enforceable. But -- but,
21 remember, we have a fairly incestuous group of companies
22 here.

23 Q Uh-huh.

24 A So, in theory, you could have a spreadsheet
17:55 25 that -- that -- that does that, but it has to be

17:55 1 ultimately enforceable by the entity that's seeking to
2 recover the --

3 Q Got it. So -- but for purposes of tracking
4 the investments --

17:55 5 A Yes.

6 Q -- a spreadsheet would have been sufficient,
7 if it's enforceable?

8 MS. WARDEN: Objection.

9 A If it's enforceable.

17:55 10 MS. WARDEN: Speculative.

11 BY MR. HULINGS:

12 Q Okay. Well, what about a database? Would
13 that be -- could that --

14 A A database is a spreadsheet, by the way.

17:56 15 MS. WARDEN: Same objection.

16 BY MR. HULINGS:

17 Q Okay. Well, kind of not, but that's okay.

18 A I'm an old programmer, by the way.

19 Q Do you know who Chris Turner is?

17:56 20 A Yeah.

21 Q Do -- are you aware that Mr. Turner created
22 the database for the deeproot companies?

23 A No, I am not -- I -- I -- no.

24 Q You never had that --

17:56 25 A That's not the Chris Turner I'm thinking of.